

**ENTERED**

April 24, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISIONATAIN SPECIALTY INSURANCE  
COMPANY,

Plaintiff,

VS.

TRIPLE PG SAND DEVELOPMENT,  
LLC,

Defendant.

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CIVIL ACTION NO. 4:21-CV-02122

**ORDER**

Before the Court is Plaintiff Atain Specialty Insurance Company's Motion for Certificate of Appealability (Doc. #38) and United States Magistrate Judge Yvonne Y. Ho's Memorandum and Recommendation filed on April 4, 2023 (Doc. #39). The deadline for filing objections has passed, and no objections have been filed. Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Memorandum and Recommendation for clear error. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Finding no clear error, the Court adopts the Memorandum and Recommendation in its entirety.

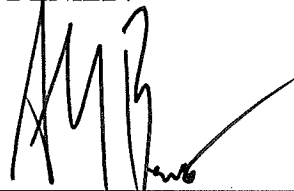
Plaintiff seeks certification from the Court to appeal the Court's denial of its Motion for Summary Judgment (the "Order," Doc. #37) under 28 U.S.C. §1292(b). Doc. #38. "Section 1292(b) appeals are exceptional." *Clark-Dietz & Assocs. v. Basic Constr. Co.*, 702 F.2d 67, 69 (5th Cir. 1983). The Order applied "clearly established . . . controlling Texas law that an insurer owes its insured a duty to defend 'if a plaintiff's factual allegations potentially support a covered claim.'" *Endurance Am. Specialty Ins. Co. v. Brown, Miclette & Britt, Inc.*, 2010 WL 816710, at

\*2 (S.D. Tex. Mar. 4, 2010) (quoting *Zurich Am. Ins. Co. v. Nokia, Inc.*, 268 S.W.3d 487, 490 (Tex. 2008)). Plaintiff's mere disagreement with the Court's Order fails to demonstrate a "substantial ground for difference of opinion." See 28 U.S.C. § 1292(b). Therefore, Plaintiff's Motion for Certificate of Appealability (Doc. #38) is DENIED.

It is so ORDERED.

APR 24 2023

Date

A handwritten signature in black ink, appearing to read 'AMB', with a long horizontal stroke extending to the right.

The Honorable Alfred H. Bennett  
United States District Judge